



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

AL:DMP:JEA
F. # 2018R00080

*271 Cadman Plaza East
Brooklyn, New York 11201*

August 10, 2021

By ECF

The Honorable William F. Kuntz, II
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Kassin Rivers
Criminal Docket No. 18-192 (WFK)

Dear Judge Kuntz:

The government respectfully submits this letter to provide a status update regarding Your Honor's Order regarding a visit to the Bureau of Prisons ("BOP"), Metropolitan Detention Center ("MDC"). (ECF No. 135 (the "Order")).

On August 2, 2021, Your Honor issued the Order, which requires that (i) within 30 days, the Federal Defenders, the United States Attorney for the Eastern District of New York, and, if they elect to join, the Chief Judge and Chief Magistrate Judge of the Eastern District of New York visit the MDC "to observe the conditions that gave rise to this Court's concern about the treatment of [the defendant]"; (ii) the Federal Defenders file a written report with the Chief Judge and Chief Magistrate Judge within 30 days of the completion of the visit; and (iii) if deemed appropriate by the Federal Defenders, the Chief Judge and the Chief Magistrate Judge, a public report be filed regarding the MDC visit. (Id.)

The government respectfully requests that (i) Assistant United States Attorney Seth Eichenholtz and an investigator from the United States Attorney's Office be permitted to represent the government during the visit to the MDC, and (ii) the government and Federal Defenders be permitted one week to meet and confer regarding the plan for the visit.

First, the government requests that Assistant United States Attorney Seth Eichenholtz, who is a Deputy Chief of the Office's Civil Division, and an investigator employed by the Office be permitted to represent the government during the site visit. The government believes that AUSA Eichenholtz is an appropriate representative of the Office based on his extensive experience as lead counsel in two recent matters related to the MDC,

Chunn v. Edge, 20-CV-1590 (RPK) (where he attended a tour of the facility to investigate issues pertaining to COVID mitigation) and Federal Defenders of New York Inc. v. Federal Bureau of Prisons, et al., 19-CV-660 (MKB), and his prior participation in other site visits to the MDC.

Second, the government also requests that the government and Federal Defenders be permitted one week to meet and confer regarding the plan for the site visit of the MDC. This will allow the parties to attempt to agree on the manner of the site visit, so that the parties are best able to observe the conditions concerning the treatment of the defendant Rivers in compliance with Your Honor's Order. As part of that meet-and-confer process, the government expects that the parties will confer regarding, among other things, the date, time and the duration of the site visit; what locations within the MDC the parties will visit; and who the Federal Defenders may talk to during the visit. With respect to the latter issue, the meet-and-confer process will allow the parties to address compliance with the Department of Justice's Touhy regulations, if necessary, as counsel should not interview or question federal employees during an inspection without first obtaining the required approval pursuant to those regulations. See Chunn v. Edge, 20-CV-1590 (RPK), 2020 WL 1872523, at *2 (E.D.N.Y. Apr. 15, 2020) (finding that "[the Touhy] regulations [] generally require DOJ approval before a DOJ employee may disclose information that the employee obtained during the employee's performance of official duties.")).¹ Similarly, we understand that the Federal Defenders may seek information about certain inmates' medical care ahead of the visit, and the requested time will allow the parties to discuss what information can be provided to Federal Defenders without impacting medical privacy rights. Finally, we expect to confer with Federal Defenders regarding the process for developing and submitting a report to Chief Judge Brodie and Chief Magistrate Judge Pollak, including whether, when and how this Office and the Bureau of Prisons can provide their input prior to the report's submission and possible publication, and how they can otherwise be heard on issues pertaining to the report.

¹ Counsel should also, in general, not interview inmates, as most inmates in the MDC are represented parties in ongoing criminal cases.

Accordingly, the government respectfully requests that Assistant U.S. Attorney Seth Eichenholtz and an investigator be permitted to represent the government during the visit to the MDC, and that the government and Federal Defenders be permitted one week to meet and confer regarding the plan for the site visit of the MDC.

Respectfully submitted,

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